



South Carolina House of Representatives

Legislative Update

Robert W. Harrell, Jr., Speaker of the House

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HOUSE WEEK IN REVIEW

Working under an extended session of the General Assembly, the House of Representatives approved a **STATE GOVERNMENT BUDGET** for Fiscal Year 2011-2012 by adopting the conference committee reports for **H.3700**, this year's **GENERAL APPROPRIATIONS BILL**, and **H.3701**, the joint resolution making appropriations from the **CAPITAL RESERVE FUND**. The \$6 billion budget includes cuts for state government agencies in light of the declines in state revenue experienced in recent years and the absence of federal stimulus funds that have been used to help offset shortfalls.

The budget includes funds that have only recently become available for appropriation because of state revenue estimates that have been revised upwardly by the Board of Economic Advisors. \$146 million of these funds is devoted towards paying off the Unemployment Insurance Loan that the state had to obtain from the federal government when South Carolina's jobless benefit fund became insolvent. The funding is sufficient to avoid federal penalties that would otherwise be assessed on the state's employers, thereby allowing the total liability of businesses to be reduced by an estimated 24%. \$56 million of these funds recently available for appropriation is devoted to K-12 education, distributed to the public schools under the Education Finance Act funding mechanism. The Department of Revenue is directed to pursue its enhanced tax collection enforcement initiative for foreign taxpayers only, utilizing no additional funding, in order to yield an estimated \$53.8 million. The budget plan utilizes \$107 million in Capital Reserve Fund allocations.

\$105 million in recurring funds and \$56 million in non-recurring funds for Education Finance Act items allows for the base student cost to be increased to an estimated \$1,880 per pupil. \$25 million is included for the virtual and brick and mortar charter schools of the South Carolina Public Charter School District. Funds are provided to the state's special schools to allow them to operate near full capacity. \$20 million in enhanced tax collection enforcement funds is utilized to offset losses experienced by school districts when the Index of Taxpaying Ability is updated.

The state's institutions of higher education receive cuts ranging from 5 to 8 percent, with budget reductions distributed to universities and colleges using a formula that takes into account the percentage that state general funds represent within an institution's budget and favors institutions with successful graduation rates and higher in-state enrollment. Several appropriations are made from the Capital Reserve Fund to allow higher education institutions to undertake deferred maintenance projects. The state's scholarship programs are fully funded.

The Department of Health and Human Services receives an additional \$435 million mostly to offset the agency's \$350 million deficit. The budget plan eliminates the proviso that has prohibited alterations in the rates paid to doctors and other service providers in the state's Medicaid Program. Instead, the Director of the Department of Health and Human Services is authorized to reduce provider rates as a cost-saving measure. The budget also allows access to \$157.3 million in Medicaid Reserve Fund revenue collected from the fifty-cent cigarette surcharge for maintenance of effort in the Medicaid Program. Residual funds from the cigarette surcharge are to remain in the Medicaid Reserve Fund

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and may be used by the DHHS director to ensure access to care. \$28 million in enhanced tax collection enforcement funds is devoted to Medicaid maintenance of effort.

The Judicial System is spared funding reductions and receives \$5 million in capital reserve funds for statewide implementation of its electronic court filing initiative.

\$3.4 million in recurring funds is allocated to the Department of Corrections for a Youthful Offender Intensive Supervision Program that moves younger inmates into intensive community supervision with the goal of avoiding the need for long term incarceration. The department is fully funded according to the agency's budget request with recurring general funds.

\$5 million is included for the Department of Public Safety to increase trooper presence. \$1.3 million is allocated for the department's new Illegal Immigration Enforcement Unit.

The Department of Disabilities and Special Needs receives an additional \$35 million in recurring general fund appropriations to maintain agency operations. The Department of Social Services is fully funded according to its budget request.

The Department of Health and Environmental Control is allocated \$3 million for the AIDS Drug Assistance Program (ADAP) and \$2.5 million for vaccines for underinsured children.

Existing benefits are maintained under the state employee health insurance plan and the additional cost for maintaining the program is divided equally between state employees and their state agency employers.

The state's reserve funds are replenished.

The budget includes a \$20 million reduction in state aid to local governments, representing a decline of almost 10 % in state funding for political subdivisions.

Budget cuts are directed to state agencies and institutions to eliminate taxpayer funded lobbying. All state agencies and institutions are prohibited from using general fund appropriations to compensate employees who engage in lobbying activities.

The budget includes \$5 million in capital reserve funds for the Deal Closing Fund that the Department of Commerce uses to recruit new business to South Carolina. \$5 million in capital reserve funds is also allocated to the department for regional economic development organizations.

\$13 million in capital reserve funds is included for new job training at the state's technical colleges.

The Department of Parks, Recreation and Tourism receives \$5.4 million in capital reserve funds for marketing destination specific tourism and \$100 thousand in capital reserve funds for regional tourism promotion.

All general funds are eliminated for South Carolina Educational Television, but SCETV is allowed to retain revenue derived from the use of its broadcast towers, signal spectrum, and contracts for other facilities and services in order to fund its operations.

The Arts Commission is required to expend seventy percent of appropriated state funds on grants to support the statewide improvement of learning and enrichment opportunities for children and communities through educational and cultural programs.

The Forestry Commission is shielded from general fund reductions and receives \$3 million in capital reserve funds to replace equipment used for such activities as firefighting.

The General Assembly approved and the Governor has signed into law **S.20**, legislation revising the state's **ILLEGAL IMMIGRATION** provisions. Highlights of the legislation include the following.

Failure to Carry a Certificate of Alien Registration

This legislation requires a person eighteen or older to carry any alien registration documentation he is issued pursuant to federal law while the person is in this State. A violation is a misdemeanor.

Law Enforcement Authorization to Determine Immigration Status

This legislation allows a law enforcement officer who lawfully stops, detains, investigates, or arrests a person for a criminal offense to make a reasonable effort to determine whether that person is lawfully present in the United States, if during that time the officer has reasonable suspicion to believe that the person is unlawfully present. The officer shall make these efforts during the stop or arrest, unless doing so would hinder the investigation. The legislation provides an exception to these provisions for school resource officers.

If the person presents a driver's license or picture identification issued by the South Carolina Department of Motor Vehicles or another state; a picture identification issued by the United States; or a tribal picture identification, or if the officer is able to verify that the person has been issued one of these documents, he is presumed to be lawfully present in the country. If the person meets the presumption, the officer may not further stop, detain, investigate, or arrest the person based solely on the person's lawful presence in the United States.

If this presumption is not met, the officer shall make a reasonable effort to verify the person's presence in the country by one of the following methods: contacting the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety; submitting an Immigration Alien Query through the International Justice and Public Safety Network; contacting the United States Immigration and Customs Enforcement's Law Enforcement Support Network; or contacting the United States Immigration and Customs Enforcement's local field office.

The officer shall stop, detain, or investigate the person only for a reasonable amount of time as allowed by law. If the officer cannot verify the person's lawful presence in the United States by one of the methods described above, the officer may not further stop, detain, investigate, or arrest the person based solely on his lawful presence in the United States. If the officer determines that the person is unlawfully present in the United States, he shall determine in cooperation with the appropriate entity whether he shall

retain custody of the person for the underlying criminal offense, or whether the Illegal Immigration Enforcement Unit within the Department of Public Safety or the United States Immigration and Customs Enforcement shall assume custody.

A law enforcement officer may not attempt to make an independent judgment of a person's lawful presence in the United States.

Any time a motor vehicle is stopped by a law enforcement officer without a citation being issued or an arrest being made and the officer contacts the Illegal Immigration Unit within the Department of Public Safety, the officer who initiated the stop must complete a data collection form. This form must include information regarding the age, gender, and race or ethnicity of the driver of the vehicle.

False Identifications

The legislation provides that it is unlawful for a person to display, cause or permit to be displayed, or have in the person's possession a false, fictitious, fraudulent, or counterfeit picture identification for the purpose of offering proof of the person's lawful presence in the United States. A first offense is a misdemeanor; a second or subsequent offense is a felony.

This legislation provides that it is a felony for a person to make, issue, or sell, or offer to make, issue, or sell, a false, fictitious, fraudulent, or counterfeit picture identification that is for use by an alien who is unlawfully present in the United States.

Harboring and Transporting Illegal Aliens

This legislation expands the current offenses relating to harboring and transporting an illegal alien with intent to further that person's illegal entry into the United States or avoiding apprehension or detection of that person's illegal status by authorities. This legislation provides it is a felony for an illegal alien to allow himself to be transported within the State or to solicit or conspire to be transported within the State. The legislation further provides that it is a felony for an illegal alien to conceal himself from detection or to solicit or conspire to conceal himself from detection.

Illegal Immigration Enforcement Unit

The legislation establishes the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety. The enforcement of immigration laws is the only responsibility of the unit. The unit is under the administrative direction of the department's director, and the director is required to negotiate a memorandum of agreement with the United States Immigration and Customs Enforcement. The department shall develop an illegal immigration enforcement training program to assist local law enforcement agencies. The unit must be funded annually by a specific appropriation to the unit in the State's general appropriation's act, separate and distinct from the department's other appropriations. The legislation provides that the unit is established upon receiving funding and authorization to enforce federal immigration law.

This legislation repeals a statute relating to the State Law Enforcement Division negotiating a memorandum of understanding with federal authorities regarding the enforcement of immigration laws.

Transport of Prisoners to Federal Facility or Custody

This legislation allows a jail keeper to securely transport a prisoner who is an illegal alien to a federal facility in this State or to any other point of transfer into federal custody that is outside the jail keeper's jurisdiction. Judicial authorization must be obtained before transporting a prisoner to a point of transfer that is outside of this State.

If a prisoner who is an illegal alien completes the prisoner's sentence of incarceration, the jail keeper shall notify the United States Department of Homeland Security and shall securely transport the prisoner to a federal facility in this State or to any other point of transfer into federal custody. Judicial authorization must be obtained before transporting a prisoner to a point of transfer that is outside of this State.

Civil Actions to Enforce Laws Relating to Immigration

This legislation allows a resident of a political subdivision to bring a civil action to enjoin any action taken intentionally by the political subdivision in violation of immigration laws.

Employment

This legislation requires public and private employers to utilize the federal work authorization program, E-Verify, to verify the employment authorization of all new employees. The legislation deletes current provisions which allow the use of alternative forms of identification other than E-Verify.

For private employers, the legislation reduces the time frame to obtain verification of the work authorization of a new employee from five days to three days. A private employer who does not comply with these requirements violates the private employer's licenses.

If a private employer is a contractor, this legislation requires the private employer to maintain the phone numbers of all subcontractors and sub-subcontractors performing services for the private employer. This information must be provided to the director of the South Carolina Department of Labor, Licensing and Regulation (LLR) pursuant to an audit or investigation within seventy-two hours of the director's request.

This legislation provides that a private employer who knowingly or intentionally employs an unauthorized alien violates the private employer's licenses.

In compliance with the recent United States Supreme Court decision, this legislation deletes provisions allowing civil penalties against private employers for immigration violations.

The legislation revises penalties for violations of the statute requiring registration and participation in E-Verify. The legislation provides for staggered penalties. Among other things, administrative penalties for violations include probation, termination of an employee whose work authorization was not verified, and suspension of the private employer's licenses for varying periods of time. Also, the legislation requires the director of LLR to notify federal, state, and local law enforcement officials of any suspected unauthorized aliens employed by the private employer. Additionally, in certain circumstances this legislation allows a private employer with one violation of this statute to have his name removed from the LLR website six months after publication.

The legislation revises penalties for violations of the statute which prohibits the intentional employment of unauthorized aliens. Among other things, the legislation provides that during periods of suspension, the private employer may not engage in business, open to the public, employ an employee, or otherwise operate.

In taking any disciplinary action for a violation of the statute requiring registration and participation in E-Verify or the statute which prohibits the intentional employment of unauthorized aliens, the legislations adds to the list of factors to be considered, the degree of the violation and the good faith of the private employer.

If a private employer continues to engage in business after the private employer's licenses have been revoked, this legislation requires LLR to seek an injunction from the Administrative Law Court to enjoin the private employer from continuing to operate.

This legislation requires LLR to notify the applicable licensing agency or political subdivision if LLR determines that a private employer's license must be suspended or

revoked. The applicable agency or political subdivision must immediately suspend or revoke the private employer's license.

This legislation provides that a license suspension or revocation does not constitute a dissolution, liquidation, or a winding down process, or a transfer or other taxable event for tax purposes, and does not affect protections against personal liability provided in Title 33.

The House approved **S.815**, the **REDISTRICTING PLAN FOR THE SOUTH CAROLINA SENATE**, and enrolled the bill for ratification. The House amended Senate amendments to **H.3991**, the **REDISTRICTING PLAN FOR THE SOUTH CAROLINA HOUSE OF REPRESENTATIVES**, and returned the bill to the Senate. The Senate subsequently concurred in those amendments and enrolled the bill for ratification. The bills redraw the election districts of the South Carolina General Assembly to take into account the population shifts recorded in the 2010 United States Census and address such concerns as compliance with federal Voting Rights Act requirements for minority representation.

The House overrode the Governor's veto on **S.588**, the **"STROKE PREVENTION ACT OF 2011"**, to allow the bill to become law. Based upon recommendations of the Stroke System of Care Study Committee established in 2009, this legislation requires the Department of Health and Environmental Control to identify hospitals as primary stroke centers and stroke enabled centers through telemedicine. The bill establishes a Stroke System of Care Advisory Council to be appointed by the director of the South Carolina Department of Health and Environmental Control to advise DHEC on the development and implementation of a statewide system of stroke care. The legislation establishes a Stroke Registry Task Force, as a subcommittee of the Stroke System of Care Advisory Council, to maintain a statewide stroke registry database that compiles information and statistics on stroke care.

The House adopted the conference committee report on **S.30**, relating to **MAGISTRATES**, and enrolled the bill for ratification. This legislation revises the powers and duties of magistrates to provide that an arrest warrant may not be issued unless sought by a law enforcement officer acting in his official capacity. If an arrest warrant is sought by someone other than a law enforcement officer, the court must issue a courtesy summons. If a defendant named in a courtesy summons fails to appear before the court pursuant to the summons, the court must issue an arrest warrant for the underlying offense based upon the original sworn statement of the affiant who sought the courtesy summons, provided the sworn statement establishes probable cause that the underlying offense was committed. The legislation also revises the appointment provisions for magistrates to allow for the termination of magistrate positions.

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